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8 IN THE UNITED STATES DISTRICT COURT
9
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 ALCED BROUSSARD,
15 Defendant.

CASE NO. 1:03-CR-05054-DAD
STIPULATION TO CONTINUE SENTENCING
HEARING; ORDER
DATE: February 28, 2022
TIME: 9:00 a. m.
COURT: Hon. Dale A. Drozd

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17 On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the
18 Eastern District of California until further notice. This General Order was entered to address public
19 health concerns related to COVID-19. Further, pursuant to General Order 614, 620, 624, 628, and 630
20 and the CARES Act, this Court's declaration of judicial emergency under 18 U.S.C. § 3174, and the
21 Ninth Circuit Judicial Council's Order of April 16, 2020 continuing this Court's judicial emergency, this
22 Court has allowed district judges to continue all criminal matters to a date after May 1, 2020¹.

23 Although the General Order addresses the district-wide health concern, the Supreme Court has
24 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
25 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
26 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no

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28 ¹ A judge "may order case-by-case exceptions" at the discretion of that judge "or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
 2 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 3 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either
 4 orally or in writing”).

5 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 6 and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of
 7 judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only
 8 if “the judge granted such continuance on the basis of his findings that the ends of justice served by
 9 taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
 10 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of
 11 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 12 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

13 The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 14 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 15 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 16 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 17 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 18 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 19 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 20 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 21 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

22 In light of the societal context created by the foregoing, this Court should consider the following
 23 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 24 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
 25 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 26 pretrial continuance must be “specifically limited in time”).

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STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for sentencing on February 28, 2022.

2. By this stipulation, defendants and government now move to continue the sentencing hearing until March 7, 2022, at 9:00 a.m.

3. The parties request the continuance for the purpose of conducting further investigation bearing on a final sentencing recommendation.

4. No exclusion of time is needed.

IT IS SO STIPULATED.

Dated: February 23, 2022

PHILLIP A. TALBERT
Acting United States Attorney

Dated: February 23, 2022

/s/ LAUREL J. MONTOYA
LAUREL J. MONTOYA
Assistant United States Attorney

to March 7, 2022, at 9:00 a.m. Because the Speedy Trial Act does not apply to sentencing, no exclusion of time under the Act is necessary in connection with this continuance.

IT IS SO ORDERED.

Dated: **February 23, 2022**

Dale A. Droyd